



## STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board

Ben Ysursa, Secretary of State

Lawrence G. Wasden, Attorney General

Keith L. Johnson, State Controller

Marilyn Howard, Superintendent of Public Instruction

Winston A Wiggins, Secretary to the Board

### **Final Minutes Regular Land Board Meeting August 12, 2003**

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 12, 2003 in Boise, Idaho. The meeting began at 9:06 a.m. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Ben Ysursa  
Honorable Attorney General Lawrence G. Wasden  
Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Winston A Wiggins

Controller Keith Johnson was absent for this meeting.

#### **• CONSENT AGENDA**

**Director Wiggins provided background information on the Consent Agenda items.**

**A motion was made by Attorney General Wasden to approve the Consent Agenda in its entirety. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Controller Johnson being absent for this vote.**

#### **1. Director's Report – approved**

- A. Interest Rate on Department Transactions – July 2003
- B. Bureau of Surface and Resource Management, Minerals Section, Official Transactions – June 2003
- C. Bureau of Real Estate, Land Sale Section, Official Transactions – June 2003
- D. Bureau of Real Estate, Easement Section, Official Transactions – June 2003
- E. Bureau of Surface and Resource Management, Range Management and Surface Leasing Section, Official Transactions – June 2003
- F. Timber Sale Official Transactions – June 25, 2003 through July 29, 2003
- G. Timber Sale Activity Report
- H. Current Legal Matter Summary
- I. Fire Season Update

#### **• *Fire Season Update* – Director Wiggins**

To date, Department expenditures are estimated at \$5.2 million, with approximately \$600,000 reimbursable from other agencies. However, based on the current fire situation, that figure is low. The cost estimate is now \$8 million. Recently, two significant fires occurred on state protection. One fire was in difficult terrain with heavy fuel. The other fire was in the vicinity of homes. Two to three

weeks of the core fire season remain so cost projections may climb higher. Projected figures are being provided to Larry Schlicht and Ray Houston.

*DISCUSSION:* Governor Kempthorne asked if this fire season is comparable to the calendar year 2000 fire season. Director Wiggins stated this season has the potential to be very similar. Information from the northern part of the state is that conditions this year exceed those in either 1988 or 2000 and approach those from 1967, which was probably the worst recent season.

Dr. Howard asked if the fire in the Grandjean area was on state protection. Director Wiggins stated it is not. Fires currently on the news in Grandjean, Warm Lake and north of Council are all on Forest Service protection so the Forest Service will pay the bills for suppression. Department staff may be providing assistance on those fires, but, in those cases, the Forest Service will pay us and that payment falls into the reimbursable portion of the cost.

## **2. Endowment Fund Investment Board's Manager's Report – Staffed by Matthew Haertzen, CFA, Manager of Investments, EFIB**

*DISCUSSION:* Governor Kempthorne asked Mr. Haertzen for an update. Mr. Haertzen stated the numbers are positive for fiscal year-to-date. People are taking a look-and-see attitude about second quarter profit figures. A number of corporations have exceeded expectations. Company statements are not showing large write-offs. The portfolio is positioned to do well. Corporate profitability is again approaching the levels we saw at the peak in 2000.

Fixed income is down 2 1/2%. We have record low interest rates. Hopefully we will start to see economic growth in the next couple of years. Some of our growth managers have done really well on a year-to-date basis. One of the discussion items over the last six or seven months has concerned the growth side. In down markets the managers have been under-performing. It is important that we follow these managers closely to understand and to realize in a down market growth managers tend to lag when their style is out of favor. Patience has been rewarded in some of the portfolios.

Governor Kempthorne asked Mr. Haertzen if current managers will be retained. Mr. Haertzen responded there may be future changes in the portfolio.

Dr. Howard commented that current discussions indicate the fund may be down as much as \$6 million by next year. She asked Mr. Haertzen if that figure still stands today based on the current market. Mr. Haertzen responded yes. Given the fact that the markets have not moved, year-to-date the portfolio is up about \$2.5 million.

Mr. Haertzen stated the EFIB is holding an off-site meeting to discuss spending policy issues, as well as other issues, on August 20. The EFIB will discuss whether it has been specific market conditions that have caused these payments to be missed, or does the EFIB need to fundamentally look at the payout level set for the endowment portfolio.

*BOARD ACTION:* No action was taken on this agenda item.

## **3. Timber Sales – Staffed by Bob Helmer, Chief, Bureau of Forest Management – approved**

A.	Uleda East	CR-1-0336	2,200	MBF
B.	Mica Basin Pole	CR-3-0503	645	MBF
			206,325	LF
C.	North Potato Hill	CR-41-0001	5,050	MBF
D.	Church Canyon	CR-4-5003	1,395	MBF
E.	Upper Mosquito	CR-5-0107	1,427	MBF

**AGENDA ITEM 3.B – Mica Basin Pole**

*DISCUSSION:* Governor Kempthorne asked the purpose for the Mica Basin Pole sale. Director Wiggins stated the purpose is to remove the cedar poles and to regenerate the land. Cedar poles will not survive or grow in an open stand.

**4. Request for Conceptual Approval to Amend the State of Idaho/Robert T. Hitchcock Land Exchange – Staffed by Perry Whittaker, Chief, Bureau of Real Estate – approved**

*DEPARTMENT RECOMMENDATION:* Conceptually approve this exchange proposal and direct the Department to proceed with the appraisal, public hearing and negotiation of a final exchange proposal.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

**5. Agreement for Purchase of Conservation Easement, St. Joe Basin Forest Conservation Project: Phase 1 (Mica Creek) – Staffed by Lorna Jorgensen, Deputy Attorney General, IDL – approved**

*DEPARTMENT RECOMMENDATION:* Authorize Idaho Department of Lands to acquire the conservation easement on 5,074.13 acres.

*DISCUSSION:* None.

*BOARD ACTION:* Approved.

**6. Minutes – approved**

A. Regular Land Board Meeting – July 8, 2003

**• REGULAR AGENDA**

**7. Request for Conceptual Approval of Proposed Land Exchange Involving the State of Idaho, Bureau of Land Management, U. S. Forest Service and the City of Boise – Presented by Jay Biladeau, Assistant Director, Lands, Minerals, Range – approved**

*DEPARTMENT RECOMMENDATION:* Conceptually approve this exchange proposal and direct the Department to work with the City of Boise, the USFS and the BLM to proceed with timber cruises, environmental studies and appraisals necessary for this exchange.

AUDIENCE WITH THE BOARD
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Justice McDevitt, Foothills Conservation Advisory Committee, was granted an audience with the Board.

**Justice McDevitt.** Justice McDevitt stated his presence today is simply to endorse this exchange, as he has previously. All of this began with a Memorandum of Understanding signed in 1999 where, for the first time, all of the agencies in the Boise Front were brought together to agree on how the parcels would be managed for public good. Out of that, land exchanges had to take place. Over the years, this has been brought to fruition.

Justice McDevitt thanked the Land Board for the efforts of Director Wiggins, Mr. Jay Biladeau and Mr. Perry Whittaker. Mr. Whittaker has been involved in multiple meetings with all of the agencies. Director

Wiggins recently received a letter from the Forest Service formally endorsing their part in the exchange. That is a big step forward.

Justice McDevitt also thanked Scott Turlington of the Governor's office and Clive Strong and his staff of the General's office. The Attorney General's office has been helpful with borderline disputes in connection with some of the exchanges with the Department of Fish and Game.

Justice McDevitt stated the Boise City Council has authorized the Foothills Conservation Advisory Committee to expend approximately \$500,000 on activities with appraisers, NEPA studies, environmental studies and cultural studies. These activities will take place between now and the end of the year.

Approximately 20,000 acres is being exchanged through this process to end up with a net gain for perpetual public use in the Boise Front of 6,200 acres and with the Idaho Department of Lands receiving income-generating property.

*DISCUSSION:* Governor Kempthorne asked Justice McDevitt how close this process moves toward realizing the ultimate goal of access to the Foothills. Justice McDevitt responded it gets us very close. There are other parcels across the Front that are in private hands. The Committee is working with Senator Craig's office in separate legislation on some conservation grants for those parcels. The Senator's office has been very helpful and attentive. If the Land Board approves this agenda item, the Committee will go north to explain to each county commissioner what happens in their county so that they are aware that the exchanges are taking place.

Property adjacent to the military reserve has been acquired. That puts us contiguous to Department of Lands' property that is part of this exchange. The Department of Lands property is contiguous to the BLM property so that gives access to the Foothills. We are considering going across and down in the west, plus one access in the middle, which really takes us up 8<sup>th</sup> Street where the city owns property already. One parcel has also been acquired from United Parcel. It is very close. Without this exchange, the dream could not occur.

Secretary of State Ysursa asked if any discussion has taken place regarding Blaine County property being included in a package as part of the negotiations with the Forest Service. Assistant Director Biladeau stated discussions have been held with the Forest Service on those parcels. However, those parcels will be involved in a separate exchange.

Governor Kempthorne thanked all those involved in this process. He stated, "This is a dream that is coming true."

*BOARD ACTION:* A motion was made by Attorney General Wasden to accept the Department's recommendation. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Controller Johnson being absent for this vote.

## **8. Review and Consideration of the Hearing Officer's Recommended Order and Adoption of Final Order – Weimer – Presented by Steve Schuster, Deputy Attorney General, IDL – approved**

*DEPARTMENT RECOMMENDATION:* The Department recommends that the Land Board adopt the Hearing Officer's *Recommended Order* as the *Final Order*. In short, the Department recommends that the Board: (1) deny Claimant Weimer's request that the Board recognize an unconditional easement for access to his property under R.S. 2477 or under Idaho Code § 40-107 and § 40-204A; and (2) deny Claimant Weimer's request that the Land Board recognize an unconditional easement for access to his property under the doctrine of implied easement.

## AUDIENCE WITH THE BOARD

Lane and Athena Weimer were granted a ten-minute audience with the Board.

**Mr. Weimer.** Mr. Weimer reviewed handout materials. Regarding Recommended Order, Finding of Fact 9, Mr. Weimer stated he never declared that the route under permit RW-40686 from section 16, township 39 north, range 4 east was RS-2477. He stated the RS-2477 route was over the permitted route RW-40686 from section 16 to 24 in the same township. Mr. Weimer stated the Hearing Officer never ruled on either section of the route that he claimed as RS-2477. Mr. Weimer referenced Idaho Supreme Court, *Farrell v. Lemhi County*, December 27, 2002.

Mr. Weimer stated statement two in a February 20 letter from Director Wiggins was incorrect. The route in question is used by logging trucks and other vehicles during logging operations, but the State blocks it year long with barricade signs restricting use to the public.

Mr. Weimer stated Dworshak Reservoir was built with State permission. State water blocks his access to the Bashaw Road. North Fork Trail provided access to his homestead from the south. Access to a public road did exist at the time of the patent to John Lewis in 1910. The Bashaw Road was declared a public road that terminated about a mile and a half south of John Lewis homestead, and subsequent events made that access no longer usable.

Mr. Weimer referred to *Ritter v. Standal*. Mr. Weimer stated the Land Board had to okay, and the Department of Water Resources had to okay, the reservoir and that State land blocks the land. Referring to *Farrell v. Lemhi County*, Mr. Weimer stated the record established that a road was created by common law dedication. Referencing *Highway District v. Yacht Club*, Mr. Weimer stated the court found that the act of filing and recording a plat or map is sufficient to establish. Mr. Weimer stated his family has used the route from 5-8-92 to present, and affidavits to support that fact were submitted. Mr. Weimer stated he was required to give the State of Idaho, Department of Lands, a key to the landowner lock prior to his lock being placed on the gate. The key was given to the State at no cost, and the State was not required to sign a receipt.

Mr. Weimer stated Bashaw Road did provide access to the property. Dworshak Reservoir inundated a portion of the Bashaw Road that provided access to his property to the south.

At this point, Mr. Weimer's audience ended.

**DISCUSSION:** Governor Kempthorne asked Mr. Weimer if he was able to present all of his information to the Hearing Officer. Mr. Weimer stated yes, with the exception of the last two court cases discussed today. Governor Kempthorne asked Director Wiggins if the offer to extend the Weimer current easement until December 31, 2010 was still in place, along with an offer to give Mr. and Mrs. Weimer an opportunity to make the easement permanent should the Board decide to sell the property at a later date. Mr. Weimer stated he has a temporary permit with conditions and not an easement. Director Wiggins stated the permit is temporary, but it is for a defined period of time, and it is subject to regulations. An easement does typically apply to something more permanent, but it also implies payment for that, which in this case would be fairly expensive. The permit is an alternative that grants Mr. and Mrs. Weimer the use of the road for a defined period of time under regulations, but at a very low cost. If at some point the State and the Weimers move to make this a permanent arrangement, there would also be regulations attached to that so it would not be an unrestricted access even under an easement. Mrs. Weimer emphasized that the permit states no guaranteed access has been granted, and access is not of a permanent legal nature. Governor Kempthorne asked Director Wiggins to pursue the temporary permit with the 2010 end date. Area Supervisor Bob McKnight stated he saw no problem with extending the temporary permit date.

Governor Kempthorne expressed a desire to affirm that predominately the information Mr. Weimer presented at the meeting today was also presented to the Hearing Officer. He asked if there is anything

new that would impact the Hearing Officer's Findings. Attorney General Wasden stated he has reviewed the documents and has not found anything that would change the outcome.

Mrs. Weimer asked Governor Kempthorne about the gate locks. She contacted Potlatch and discussed liability issues. Her concern is if something happened, and one of her family was unable to get out of the gate, or if emergency vehicles could not get in the gate, those parties responsible for the gate would be liable. Mrs. Weimer stated there are to be no illegal locks on the illegal gate. The gate is the issue.

Director Wiggins stated the gate has been double locked with one of the Weimers personal locks, as well as a Department of Lands lock. The Weimers have access. They are welcome to have a key to the state lock. All the state asks is that the Weimers sign a receipt for the key. The receipt is for tracking purposes. Should the Weimers desire a receipt from the state for their key, the state will provide them with a receipt so that the Weimers can also track who has their key. The gate is properly located and was put in place in accordance with law. The Weimers and the other private property owners behind the gate have the opportunity to put their lock on the gate and to have one of the state's keys so they can access their property at their own free will.

**BOARD ACTION:** A motion was made by Attorney General Wasden to adopt the Hearing Officer's Recommended Order as the Final Order following the recommendation by the Department. Secretary of State Ysursa seconded the motion. The motion carried on a vote of 4-0, with Controller Johnson being absent for this vote.

- **INFORMATION AGENDA**

**Director Wiggins briefed the Board on the Information Agenda item. No Land Board action is required on the Information Agenda.**

**9. *State of Idaho v. Blaine County*, Supreme Court 2003 Opinion No. 88**

- *At 10:00 a.m., a motion was made by Attorney General Wasden to resolve into Executive Session. Superintendent Howard seconded the motion. The motion carried on a vote of 4-0, with Controller Johnson being absent for this vote.*

- **EXECUTIVE SESSION**

**A. To Consider Records that are Exempt from Disclosure** [*Idaho Code § 67-2345(1)(d)*]

**B. To Consider and Advise Its Legal Representatives in Pending Litigation or Where There is a General Public Awareness of Probable Litigation** [*Idaho Code § 67-2345(1)(f)*]

**C. To Consider Personnel Matters** [*Idaho Code § 67-2345(1)(b)*]

- *At 10:17 a.m., a motion was made by Secretary of State Ysursa to resolve into Regular Session. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0, with Controller Johnson being absent for this vote. No actions were taken by the Land Board during the Executive Session.*

There being no further business to come before the Board, the meeting adjourned at 10:18 a.m.

IDAHO STATE BOARD OF LAND COMMISSIONERS

/s/ Dirk Kempthorne  
President, State Board of Land Commissioners and  
Governor of the State of Idaho

/s/ Ben Ysursa  
Ben Ysursa  
Secretary of State

/s/ Winston A Wiggins  
Winston A Wiggins  
Director

<p>The above-listed final minutes were approved by the State Board of Land Commissioners at the September 9, 2003 regular Land Board meeting.</p>
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